

DOCKET NO. 91-216-E - ORDER NO. 91-1140

IN RE: Application of Duke Power Company ) ORDER DENYING  
For an Increase in Electric Rates ) PETITION FOR  
and Charges. ) REHEARING AND/OR  
 ) RECONSIDERATION  
 ) OF ORDER NO.  
 ) 91-1022

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Rehearing and/or Reconsideration of Order No. 91-1022 filed on behalf of Steven W. Hamm, Consumer Advocate for the State of South Carolina (the Consumer Advocate). According to the Consumer Advocate, Order No. 91-1022 contains several errors, and each error constitutes arbitrary and capricious action by the Commission and violates the due process and equal protection clauses of the United States and South Carolina Constitutions. The Consumer Advocate alleges error on the part of the Commission in its denial of the Consumer Advocate's proposal to adjust to at least 6% the earnings rate assumption for qualified and non-qualified funds for nuclear decommissioning; the Commission's adjustment to annualize salaries and wages; the Commission's approval for inclusion in cost of service certain EEI dues; the Commission's denial of the Consumer Advocate's proposal that 50% of all public affairs department

expenses be excluded from test year operating expenses and charged below the line for lobbying; the Commission's approval of the Company's adjustment to property taxes; the Commission's decision to allow the implementation of SFAS 106; the Commission's approval of the Company's moving expenses; the Commission's decision to write off the Coley Creek abandonment costs over five years; and the Commission's disallowance of an adjustment proposed by the Consumer Advocate relating to storm damage costs.

In considering the Consumer Advocate's allegation relating to the Commission's denial of the Consumer Advocate's proposal to adjust to at least 6% the earnings rate assumption for qualified and non-qualified funds for nuclear decommissioning, the Consumer Advocate alleges that the Commission made no explicit findings of fact on this issue as required by S.C. Code Ann. §1-23-240 (1986). The Commission is aware that the sufficient findings of fact are required by S.C. Code Ann. §1-23-350 (1977). Additionally, the Consumer Advocate alleges the Commission's decision was not based upon the substantial evidence of the whole record.

As the Consumer Advocate's Petition indicates, the Commission expressed its concern about the adequacy of funding for decommissioning. The Commission recognized that the interest rates assumptions are crucial to this funding. The Order specifically states "[t]he Commission is very concerned about the adequacy of funding for decommissioning as well as appropriate cost allocation." The Commission is aware of the dynamics of the decommissioning process, associated cost uncertainties, and funding

requirements. The high degree of variability in this field is exemplified by the 25 percent contingency factor included in Mr. LaGuardia's site-specific decommissioning cost studies approved by the Commission in this case, which the Consumer Advocate has not challenged in his Petition. The Commission views decommissioning as a critical area with a concomitant need to assure adequate funds exist when needed for dismantling and disposal. Therefore, the Commission is not inclined to assume the higher earning rates proposed by the Consumer Advocate based on the evidence presented. To further assure proper operation of the decommissioning funding, the Commission required regular periodic reassessment of the Company's provisions for decommissioning in order to consider any changes which may be necessary. Order No. 91-1022, p. 14.

Therefore, the Commission finds that the more conservative proposal by the Company of 4.5% for qualified and 5.5% for non-qualified funds for nuclear decommissioning is appropriate for the purposes of this proceeding. While the Commission is aware that there is evidence to support the Consumer Advocate's proposal, likewise, there is evidence to support the Company's proposal. The Commission, as the expert designated by the legislature in the ratemaking matters, has determined that a more conservative earnings rate assumption will better ensure the adequacy of the funding for decommissioning. The Commission finds no basis to reconsider or rehear this issue.

The Consumer Advocate takes issue with the Commission's approval of the Company's adjustment to annualize salaries and

wages. The Consumer Advocate opposed the Company's adjustment because of Duke's plan to reduce its work force by 3% through attrition by year-end 1991. In Order No. 91-1022, the Commission stated that the Consumer Advocate witness could not quantify the level of the impact of 3% reduction in work force. Order No. 91-1022, p. 15. The Commission's reason for making that statement was that the Consumer Advocate did not present substantial evidence to show the level of the alleged impact of the 3% reduction. The Commission Staff, as well as the Company, provided information to the Commission supporting the recognition of wage increases which occurred during the test year. The information presented to the Commission by the Company and the Staff is consistent with the Commission's use of test year information and the known and measurable test. Additionally, the Company proposed in supplemental testimony an adjustment to recognize salary and wage increases which occurred outside of the test year. The Commission rejected this adjustment and stayed within the Commission precedent, as well as the methodology used by many regulatory jurisdictions in recognizing test year increases in salaries and wages. The Commission found in Order No. 91-1022 on page 16 that while the 3% reduction in work force was a goal of the Company, it is not something that is known and measurable at this point in time. The Commission's adjustment is supported by the substantial evidence in the record.

The Consumer Advocate also alleges error on the Commission's approval for inclusion in cost of service certain EEI dues,

eliminating only \$65,000 from the EEI Media Communication Program. The Consumer Advocate states that the Commission erroneously relied upon Company witnesses statement concerning the classification of cost with a letter that comes from EEI. The Company did not put forth substantial evidence to support its position since it did not put the letter into the record and the Company has conducted no independent review of its own to support the Commission's decision. The Commission notes that the testimony of the Consumer Advocate's witness states that while it is his position that EEI dues and payments should not be included in operating expenses for ratemaking purposes unless they result in some direct and primary benefit to consumers, he was "not suggesting that the Company must apply the direct and primary benefit to every expense and to provide justification for it (sic) inclusion in test year expenses. Most expenses by their very nature are assumed to provide direct and primary benefits to the Company's customers and thus, there is no need for the Company to make a further showing that they do" (Tr. Vol. 5, p. 29). Witness Miller went on to state that he was of the opinion that not all of the EEI expenses provide a direct and primary benefit to consumers. (Tr. Vol. 5, p. 36).

The Commission noted in Order No. 91-1022, p. 19, that "EEI is recognized as a central source of authoritative information on electric energy and provides factual information to congressional committees and regulatory agencies." The Commission Staff and the Company had already eliminated grass roots advertising. While the Consumer Advocate recommended full exclusion of all EEI dues, the

Commission is of the opinion that the Staff's elimination of certain EEI dues is appropriate and additionally, it is consistent with previous Commission decisions.

Next, the Consumer Advocate recommended that 50% of all Public Affairs's Department expenses be excluded from test year operating expenses and charged below the line for lobbying. The Commission rejected this recommendation. The Consumer Advocate alleges that the Commission's decision ignores the job descriptions of the other employees in the Department of Public Affairs and the fact that these employees have the same mandate as the two employees who lobby before the South and North Carolina Legislatures. The Consumer Advocate alleges that the Commission failed to make explicit findings concerning the job functions of the other employees in the Department of Public Affairs and what level of their salary should be allocated to lobbying and, therefore, below the line.

The Commission has reviewed the allegations of error by the Consumer Advocate and finds that as before, the Company has adequately allocated and accounted for lobbying expenses by its employees. This information was reviewed and audited by the Commission Staff. Staff applied the Commission's previous decisions concerning lobbying expenses toward this adjustment. The appropriate allocations have been made concerning the Company's lobbying expenses and no additional adjustment or reclassification is necessary in this regard.

The Consumer Advocate takes issue with the Commission's

approval of Staff's adjustment to property taxes. According to the Consumer Advocate, this adjustment does not meet the known and measurable standard. Additionally, the Consumer Advocate alleges that the Commission failed to make explicit findings of fact on the issue in violation of this Court's standard in Able. The Commission's Order contains sufficient findings and this adjustment meets the known and measurable standard. Order No. 91-1022 provides that the Company uses the property balances at the end of 1990 to determine the property taxes for calendar year 1991. The Commission noted that the Company's calculation of the tax rate was based upon actual historically experienced changes in rates. Additionally, the Commission Staff agreed with the Company's adjustment. While the tax rate for 1991 is not known, the Company's calculation of the estimate is based on historical data. The Commission found, in Order No. 91-1022, that the adjustment is based on the end-of-year actual plant balances and meets the known and measurable standard. The known and measurable standard is met because of the Company's reliance on the known historical changes in tax rates. The Commission finds that Order No. 91-1022 is sufficient in this regard and that no reconsideration or rehearing would be appropriate.

The Consumer Advocate disagreed with the Commission's treatment of SFAS No. 106. The Consumer Advocate was of the opinion that these costs should be deferred because its effective date is not until 1993. However, the record supports the Commission's decision to include in cost of service the increase in

wages, benefits and materials by \$3,830,000 to represent the implementation of SFAS No. 106. While deferral accounting has its merits in many regards, the Commission determined in this proceeding that it was appropriate to use accrual accounting to recognize as a cost of service the change in retirement benefits imposed by this statement of financial accounting standards. This is consistent with a previous Commission decision in Docket No. 90-698-C and is supported by the substantial evidence of the record.

The Consumer Advocate alleges that the Commission erred in rejecting the Consumer Advocate's recommendation that the Company's moving expenses be adjusted to reflect the average employee moving expense incurred over a five-year period from 1986 through 1990. The Consumer Advocate was concerned with fluctuations in moving expenses from year to year and recommended that the expenses for the test year be normalized over this five-year period. The Consumer Advocate's recommendation ignores the plain fact that during the test year these particular expenses were incurred by the Company. Additionally, the Consumer Advocate's recommendation ignores the Company's testimony which stated that movement of the Company's workforce experienced in 1990 should continue at an even higher rate and that the 1990 cost for employee moving expenses are representative of the upcoming years. The Consumer Advocate takes issue with these statements and alleges that they are unsubstantiated. The Commission, while not finding that these statements are unsubstantiated, maintains that the expenses were



incurred during the test year, are known and measurable, and are appropriate for ratemaking purposes.

The Consumer Advocate alleges that the Commission erred in its write off of Coley Creek costs by concluding that it had to follow the accounting treatment previously authorized by the Commission. The Consumer Advocate implies that in light of the amortization of the deferral of the Bad Creek operating costs, that the Commission should have used a ten-year amortization period. However, as noted on page 31 of Order No. 91-1022, the ten-year amortization for Bad Creek is intended to minimize the impact of the deferral to the Company's ratepayers. This helps achieve a balance between the competing interest of the Company and the ratepayers. As the Commission noted in Order No. 91-1022, Mr. Stimart testified that depending on the magnitude of the dollars, the amortization period may vary. Order No. 91-1022, p. 38. The Commission, in adopting the five-year amortization period for Coley Creek abandonment costs, recognizes that the magnitude of the dollars was not such that required a lengthy deferral. Therefore, the Commission chose the shorter amortization period and found that to be appropriate. The Commission did not err in this regard and the substantial evidence of the record supports the Commission's decision.

The Consumer Advocate, lastly, takes issue with the Commission's adjustment concerning storm damage costs. The Consumer Advocate proposed to remove a percentage of the amortization because the deferred costs included certain labor and associated benefits already included in base rates. The Commission

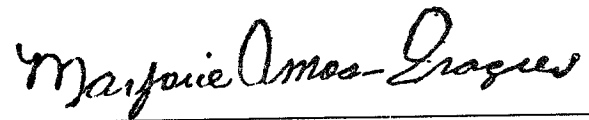
did not adopt the Consumer Advocate's proposal. The Consumer Advocate urges the Commission to re-examine this issue and approve its proposed adjustment. The Commission has reviewed the evidence in the record and finds that no further adjustment should be required concerning the deferred accounting of storm damage costs incurred in 1989. The Commission Staff agreed with the Company's adjustment after the Staff had audited the records. The Commission Staff's audit did not lead the Staff to conclude that any inappropriate labor and associated costs were reflected in the Company's adjustment. Therefore, the Commission finds that no further adjustment to the Company's deferral of storm damage costs is necessary and that its decision need not be reconsidered or reheard in that regard.

Based on a review of the allegations of error contained in the Consumer Advocate's Petition for Rehearing and/or Reconsideration of Order No. 91-1022, the Commission finds that its decisions therein are supported by law, logic and fact and that they should

not be modified or amended. The Commission further finds and concludes that the Consumer Advocate's Petition for Rehearing and/or Reconsideration of Order No. 91-1022 should be, and hereby is, denied.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director

(SEAL)